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No. 97-228

In The

Supreme Court of the United States

October Term 1996

GAMMA-10 PLASTICS, INC.

Petitioner,

vs.

AMERICAN PRESIDENT LINES, LTD. and
AMERICAN PRESIDENT COMPANIES, LTD.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

RESPONDENT'S OBJECTION TO THE MOTION OF THOMAS SCHOENBAUM TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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5 pp

ARGUMENT

The respondents, American President Lines, Ltd. and American President Companies, Ltd. object to the motion of Thomas Schoenbaum to file his proposed amicus curiae brief in support of Gamma-10 Plastics Inc.'s petition for a writ of certiorari for the following reasons..

As admitted in footnote no. 1 to his Statement of Interest, Professor Schoenbaum was the plaintiff's paid expert on admiralty law in the district court, and counsel for the petitioner wrote at least part of his motion and brief. "Petitioner will be paying the cost of printing and serving this brief." Clearly, this is a case of a co-counsel attempting to cloak himself as amicus curiae.

Furthermore, contentions of fact contained in his statement of the case, such as "[i]t is also undisputed that the goods were damaged because they were "devanned" (removed from the container in which they were packed) and left out in the open," are simply false. There was no evidence that the Shanghai shipment, which was the only subject of the appeal to the Eighth Circuit, was ever left out in the open, or that it was damaged at the time it was removed from the custody of the Shanghai Port Authority. No witness testified who claimed to have even seen the goods while they were in the custody of the Shanghai Port Authority or at the time of their removal from its custody.

In section III of his Brief he claims Jury Instruction No. 21 was erroneous because it failed to state that the carrier had a duty to notify the shipper/consignee of the cargo's arrival. Notification was never an issue raised by the plaintiff in the district court and it was never an issue on the plaintiff's appeal to the Eighth Circuit. An amicus curiae is not permitted to broaden the scope of an appeal by raising issues that have not been presented by the parties to the appeal. *Resident Council of Allen Parkway Village v. U.S. Dept. of HUD*, 980 F.2d 14043, 1048-1050

(5th Cir. 1993), *certiorari denied*, 114 S.Ct. 75, 510 U.S. 820, 126 L.Ed. 2d 43; *Preservation Coalition v. Pierce*, 667 F.2d 851, 861-862 (9th Cir. 1982).

Finally, Professor Schoenbaum erroneously states that Jury Instruction No. 21 fails to state that the duty of proper delivery means that the carrier has an affirmative duty of due care to protect the goods against loss or damage. Apparently, Professor Schoenbaum has never read Jury Instruction No. 21 because the first two sentences of the second paragraph state the following:

> The bills of lading in this case were "through bills" requiring delivery to a party in possession of an original bill of lading (the consignee). Therefore, in this case the duty of proper delivery required American President Lines either to deliver the cargo to the consignee or to deliver it to a fit wharf and to take reasonable steps to safeguard it until the shipper or the consignee had a reasonable opportunity to claim the cargo.

CONCLUSION

For the foregoing reasons, the motion of Professor Thomas Schoenbaum to file a brief in support of the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Michael A. Snyder

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Certificate of Service

I, Michael A. Snyder, counsel for the respondents, certify that I mailed true copies of the foregoing Objection of Respondents to the Motion of Thomas Schoenbaum to file an amicus brief in support of the Petitioner's Petition for a Writ of Certiorari, on this 12th day of September, 1997, to each of the following:

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September 12, 1997

Clerk of the
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**Re: Gamma-10 Plastics, Inc., Petitioner, vs.
American President Lines, Ltd. and
American President Companies, Ltd., Respondents
No. 97-228 October Term 1996**

Dear Clerk:

I enclose the original and eleven (11) copies of Respondent's Objection To The Motion Of Thomas Schoenbaum To File Amicus Curiae Brief In Support Of The Petition For A Writ of Certiorari. Will you please file this and return one court receipted copy in the enclosed self-addressed stamped envelope? Thank you very much for your cooperation in the foregoing.

Very truly yours,

RAY, ROBINSON, CARLE, DAVIES & SNYDER

Michael A. Snyder

MAS:mcs

Enclosures

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